

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Unlawful Trade Practices Act

Plaintiff brought several claims against defendant Kia Motors America Inc., including Unlawful Trade Practices (UTPA), unjust enrichment, and negligent

misrepresentation. Pursuant to Fed. R. Civ. P. 12(b)(6), defendant moved to dismiss all claims.

Judge Aiken granted defendant's motion in part and denied the motion in part. The court denied defendant's motion to dismiss regarding plaintiff's motion pursuant to the UTPA, and denied with leave to renew plaintiff's unjust enrichment claim. The court, however, granted defendant's motion to dismiss plaintiff's negligent misrepresentation claim finding no special relationship

between plaintiff and defendant.

Wright v. Kia Motors,
CV 06-6212-AA
(Opinion Jan. 31, 2007)
Plaintiff's Counsel:
Jeffrey Mutnick
Defense Counsel: Stuart Brown

Jury Trial Entitlement

Plaintiff brought an action for breach of contract and enforcement of guaranty against defendants. The parties disputed whether defendants were entitled to a jury trial. Defendants removed the action to this court from state court in September 2003. Neither party requested a jury trial until November 2006, when defendants requested leave of the court for a jury trial. Trial in this matter is set for February 27, 2007.

Judge Panter found that defendants' demand for a jury trial will

not prejudice plaintiff in preparing for trial and found defendants' demand timely. The court granted defendants' request for a jury trial.
Jackson & Perkins Wholesale, Inc. v. Smith Rose Nursery, et al.,

CV 03-3091-CO
(Order Jan. 26, 2007)
Plaintiff's Counsel:
Joseph Kellerman
Defense Counsel:
Michael Mullen

42 U.S.C. § 1983

Plaintiff brought a § 1983 action against defendant Multnomah County, among others. Plaintiff alleges several constitutional claims under the Fourth and Fourteenth Amendments, including denial of adequate medical care, excessive force and denied protection

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from harm inflicted by other inmates.

Defendants raised the affirmative defense that plaintiff failed to exhaust his administrative remedies regarding his claim against defendants, and therefore moved for dismissal pursuant to Fed. R. Civ. P. 56.

Judge Aiken relied on a Second Circuit case to analyze whether administrative remedies were actually available to the plaintiff. The court ruled that a question of fact existed as to whether the grievance procedure was actually available to plaintiff, and therefore, denied defendants' motion for partial summary judgment.

MacDonald v. Pedro et al.,

CV 06-715-AA
(Opinion, Jan. 25, 2007)

Plaintiff's Counsel:
Harrison Latto
Defense Counsel: Agnes Sowle

Jury Trials

Spencer v. Schmidt,
CV 05-3102-PA

Civil excessive force pursuant to 42 U.S.C. § 1983. Verdict for defendant.

Plaintiff's Counsel:
Jennie Clark
Defense Counsel: Gerald Warren
(Judgment, Jan. 31, 2007)

USA v. Bozarth,
CR 05-30042-PA
Defendant charged with four counts of filing false tax documents pursuant to 26 U.S.C. § 7206(1). Jury found defendant guilty on all four counts. Pending is defendant's motion for judgment of acquittal.
Defense Counsel: David Orf
Government Counsel:
William Fitzgerald
(Judgment, Jan. 9, 2007)

Barkley v. City of Klamath Falls,
CV 04-1840-PA
Civil rights excessive force claim pursuant to 42 U.S.C. § 1983. Two-day jury trial resulting in a verdict for defendants.
Plaintiff's Counsel:
Erica Lynn Wolf
Defense Counsel: Robert Franz
(Judgment, Jan. 18, 2007)

Notice Regarding Medford Division

The Court announces the retirement of Magistrate Judge Cooney from his position in Medford, Oregon, effective February 28, 2007. Judge Cooney began serving the District of Oregon in February 1990, in a part-time position. He was then appointed as a full-time Magistrate Judge on January 31, 1994. Judge Cooney has served this District for seventeen years. The Court sincerely thanks Judge Cooney for his many years of service and wishes him well in his retirement.

Mark Clarke will take over Judge Cooney's duties in Medford beginning March 1, 2007, upon his appointment as a Magistrate Judge.